

**To:** Williams, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c49312baa6744588170df68267529ef-Williams, Ann]; Barash, Shari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bad75988c0194c5390cc573a851137ee-SBarash]; Dreyfus, Melissa G. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b73e4f021102429e939aec751ee2d628-Dreyfus, Melissa G.]; Fleisig, Erica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57317ce4c3234afe86380beab9c70bd9-EFleisig]; Vlcan, Manjali [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca177e4a9bb74aa997fbfc6ec0184087-MVLcan]; Voorhees, Jeanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=83587fe90bd54b06867b1c558fa06930-Voorhees, Jeanne]

**CC:** Wagner, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=180d2657078c4877bf1ef14f2e34b9a1-Wagner, Michael]; Borci, Todd [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6d513050337e4db28ff09d5918d81810-Borci, Todd]; Moraff, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6170ef3baef40c3bdecab56fd74b07a-Moraff, Kenneth]; Abele, Ralph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=294b64cfd1484af18711c8f38462a74c-Abele, Ralph]

**Subject:** RE: Highest Attainable Condition (MRWA Variance)

**Attachments:** 2019 Redline Alewife Fact Sheet final sent to MADEP JB compare to PN versions.docx; 2019 Alewife Mystic Variance final public notice JEB.docx

We specifically requested in our comments on both the fact sheet and the variance conditions that DEP provide a rationale for concluding that no additional feasible pollutant control technology can be identified. Typically we would like to see:

### Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

I am highlighting some the additional tracked edits that DEP did not take for the consideration of this group as to whether we would like to request DEP make additional edits in the final variance documents and submission. My detailed review is attached, containing other comments on edits that DEP did not take, although those not mentioned below seemed to me. The fact sheet contains my comments on top of those we sent to DEP and the variance conditions contains my comments on top of the public notice version. The Charles River documents were similar. DEP made most of the changes we requested but:

1. DEP deleted most references to a variance "extension" and replaced with "adopt a new variance" except in one heading in the fact sheet:

### Ex. 5 Deliberative Process (DP)

2. Variance Conditions

a.

### Ex. 5 Deliberative Process (DP)

- b. Exhibit A – some projects seem to have been deleted, and for those projects that were kept, wording seems to have changed and detailed schedules have been removed. Defer to Region 1 on

### Ex. 5 Deliberative Process (DP)

It may be helpful to find out when DEP intends to submit the variance for EPA action and what they intend to provide as far as the secondary scores.

Thanks,  
Jenn

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**From:** Williams, Ann  
**Sent:** Wednesday, July 24, 2019 3:52 PM  
**To:** Nalven, Heidi <Nalven.Heidi@epa.gov>; Brundage, Jennifer <Brundage.Jennifer@epa.gov>; Barash, Shari <Barash.Shari@epa.gov>; Dreyfus, Melissa G. <Dreyfus.Melissa@epa.gov>; Fleisig, Erica <Fleisig.Erica@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Voorhees, Jeanne <voorhees.jeanne@epa.gov>  
**Cc:** Wagner, Michael <wagner.michael@epa.gov>; Borci, Todd <Borci.Todd@epa.gov>; Moraff, Kenneth <Moraff.Ken@epa.gov>; Abele, Ralph <abele.ralph@epa.gov>  
**Subject:** FW: Highest Attainable Condition (MRWA Variance)

Hi all,  
As you'll see below, MassDEP has proposed language to address our request that DEP explain why the proposed variances reflect the HAC. Jeanne and Ralph are on vacation this week, so Ken asked me to send to folks in HQ, along with a request that you give us your feedback at your earliest convenience. Ken would like to get back to DEP sometime next week.

Thanks,  
Ann

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**From:** Moraff, Kenneth  
**Sent:** Wednesday, July 24, 2019 9:28 AM  
**To:** Voorhees, Jeanne <[voorhees.jeanne@epa.gov](mailto:voorhees.jeanne@epa.gov)>; Borci, Todd <[Borci.Todd@epa.gov](mailto:Borci.Todd@epa.gov)>; Wagner, Michael <[wagner.michael@epa.gov](mailto:wagner.michael@epa.gov)>; Williams, Ann <[Williams.Ann@epa.gov](mailto:Williams.Ann@epa.gov)>; Abele, Ralph <[abele.ralph@epa.gov](mailto:abele.ralph@epa.gov)>  
**Subject:** Fwd: Highest Attainable Condition

Any reaction to DEP's language below? Ralph, copying you because I think Jeanne May be on vacation.

Ken

Begin forwarded message:

**From:** "Worrall, Eric (DEP)" <[eric.worrall@state.ma.us](mailto:eric.worrall@state.ma.us)>  
**Date:** July 24, 2019 at 8:24:46 AM EDT  
**To:** "Moraff, Kenneth" <[Moraff.Ken@epa.gov](mailto:Moraff.Ken@epa.gov)>  
**Cc:** "Brander, Kevin (DEP)" <[kevin.brande@state.ma.us](mailto:kevin.brande@state.ma.us)>, "King, Susannah (DEP)" <[susannah.king@state.ma.us](mailto:susannah.king@state.ma.us)>, "Vakalopoulos, Catherine (DEP)" <[catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us)>  
**Subject:** RE: Highest Attainable Condition

Hi Ken,

Just curious if you've received any feedback yet on the proposed language. Thanks

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**From:** Moraff, Kenneth [<mailto:Moraff.Ken@epa.gov>]  
**Sent:** Friday, July 19, 2019 3:24 PM  
**To:** Worrall, Eric (DEP)  
**Cc:** Brander, Kevin (DEP); King, Susannah (DEP); Vakalopoulos, Catherine (DEP)  
**Subject:** RE: Highest Attainable Condition

Thank you – I've passed on to our team.

Ken

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**From:** Worrall, Eric (DEP) <[eric.worrall@state.ma.us](mailto:eric.worrall@state.ma.us)>  
**Sent:** Friday, July 19, 2019 3:13 PM  
**To:** Moraff, Kenneth <[Moraff.Ken@epa.gov](mailto:Moraff.Ken@epa.gov)>  
**Cc:** [kevin.brander@state.ma.us](mailto:kevin.brander@state.ma.us); [Susannah.king@state.ma.us](mailto:Susannah.king@state.ma.us); [catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us)  
**Subject:** FW: Highest Attainable Condition

Hi Ken,

As discussed attached is draft proposed language to address EPA comments (Question 5). Please let us know what you think. Thanks, Eric

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**From:** Brander, Kevin (DEP)  
**Sent:** Friday, July 19, 2019 2:08 PM  
**To:** Worrall, Eric (DEP); King, Susannah (DEP)  
**Cc:** Vakalopoulos, Catherine (DEP)  
**Subject:** Highest Attainable Condition

Per the request by EPA, and based on my review of all past CSO planning documents for MWRA, Somerville, and Cambridge, I suggest the following text to be included in the Variance Fact Sheets and Determinations (highlighted below as a edit of the Alewife/Mystic Fact Sheet):

***Highest Attainable Condition***

Federal regulations at 40 CFR 131.14(b)(1)(ii) also establish that the requirements applicable over the term of a variance must represent the "highest attainable condition" of the waterbody segment. For discharger(s)-specific WQS variances, 40 CFR 131.14(b)(1)(ii)(A) provides that the "highest attainable condition" must be quantified as one of the following:

- (1) The highest attainable interim criterion; or*
- (2) The interim effluent condition that reflects the greatest pollutant reduction achievable; or*
- (3) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program.*

For this proposed Variance, MassDEP has incorporated conditions in the Variance which require not only implementation of the Nine Minimum Controls, but also additional system optimization measures which collectively will further minimize CSO discharges and their water quality impacts. MassDEP has conducted a review of the past CSO facilities planning documents by the CSO Variance permittees, and concluded that there are no further CSO abatement projects which could be reasonably designed and implemented in the CSO Variance timeframe. Thus, the Variance requirements, including those projects identified in Exhibit A to the Variance Determination, represent the highest interim attainable condition which can be achieved during the course of the CSO Variance. The Variance requirement for development of updated CSO control plans will facilitate a determination on the affordability and feasibility of higher levels of CSO controls, at the end of the Variance term.

KB

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